

Further Amendment
Request for Waiver Pursuant to *Public Notice* DA 13-618

In accordance with the Commission's April 5, 2013, *Public Notice* in DA 13-618, the instant amendment further supplements the Request for Waivers of Section 73.616(e) and Section 73.622(f) of the Commission's rules.

The instant minor change application, including the Request for Waivers, was filed on May 16, 2011. Pursuant to the Licensee's experimental authority in FCC File Number BDSTA-20110602ACR, as most recently extended in FCC File Number BEDSTA-20130221AAE, the Licensee has been operating WGAL pursuant to the technical parameters proposed in this application for nearly two years.

On August 30, 2012, the Licensee filed a supplement to the Request for Waivers to report that WGAL's experimental operation has significantly helped improve reception for the station's viewers, and as expected, the Licensee has received no complaints of interference from any television station or viewers. The licensee hereby reports that WGAL's experimental operation continues to be free of interference complaints.

This application requests waivers of Section 73.616(e) of the Commission's Rules to permit predicted interference in excess of the Commission's 0.5 percent new interference limit and Section 73.622(f) to permit an ERP in excess of the power limit for WGAL's height above average terrain of 419 meters. A waiver is hereby further requested pursuant to DA 13-618 because the proposed operation would increase—and the current experimental authorization does in fact increase—WGAL's noise-limited contour in one or more directions beyond the station's licensed parameters.

As demonstrated in the Request for Waivers, special circumstances warrant the requested waivers because:

- (1) the only stations potentially affected have consented to the additional predicted interference;
- (2) the increased power is necessary to restore service to WGAL's former analog viewers due to VHF digital reception issues; and
- (3) WGAL has operated with the requested parameters pursuant to experimental authority for nearly two years without complaints of interference caused to viewers or other television stations.

The waivers are further warranted in accordance with DA 13-618 because grant of the instant application is necessary to maintain WGAL's service to the public—a service that was provided by WGAL's analog facility, has been restored by WGAL's experimental digital facility, and is in jeopardy if this application for permanent authorization is not granted.

The Media Bureau has previously granted similar waivers requests. For example, in FCC File Number BPCDT-20090617ADQ (Granted March 16, 2011), the Bureau granted a waiver of Section 73.622(f) to permit WPVI-TV, Philadelphia, PA, to increase its ERP to 30.2 kW, and subsequently in FCC File Number BMPCDT-20110831ABM (Granted October 5, 2011) to 34 kW; in FCC File Number BPCDT-20090622ABV (Granted March 16, 2011), the Bureau granted a waiver of Section 73.622(f) to permit WRGB(TV), Schenectady, NY, to increase its ERP to 30.2 kW; and in FCC File Number BPCDT-20120216ADO (Granted October 11, 2012), the Bureau granted a waiver of Section 73.622(f) to permit WABC-TV, New York, NY, to increase its ERP to 34.0 kW.

Due to WGAL's special circumstances, which are similar to those the Media Bureau has previously recognized in connection with the grant of other waiver requests, the technical parameters proposed in the instant application clearly advance the public interest and satisfy the Commission's waiver standard.

Significantly, grant of the waivers would not undermine the principles espoused in DA 13-618. As set forth in the *Public Notice*,

the imposition of limits on the filing and processing of modification applications is now appropriate to facilitate analysis of repacking methodologies and to assure that the objectives of the broadcast television incentive auction are not frustrated. The repacking methodology the Commission ultimately adopts will be a critical tool in reorganizing the broadcast TV spectrum pursuant to the statutory mandate. Additional development and analysis of potential repacking methodologies is required in light of the technical, policy, and auction design issues raised in the rulemaking proceeding. This work requires a stable database of full power and Class A broadcast facilities. In addition, to avoid frustrating the central goal of "repurpos[ing] the maximum amount of UHF band spectrum for flexible licensed and unlicensed use," we believe it is now necessary to limit the filing and processing of modification applications that would expand broadcast television stations' use of spectrum.

Public Notice, DA 13-618, at 1-2 (footnotes omitted). Because WGAL's construction permit has been pending (and, as such, its proposed parameters protected from other filers), the stability of the Commission's database would not be undermined by a grant. Moreover, WGAL has been actually operating at the proposed parameters (pursuant to experimental authority), so the real-world RF environment already accounts for the proposed construction permit. Finally, WGAL operates on a VHF channel, and the Spectrum Act forbids the Commission from involuntarily repacking any UHF station to the VHF band—as a result, it is unlikely the spectrum auction or repacking methodologies could be impacted by grant of WGAL's longstanding proposal; any

station that might wish at some point in the future to voluntarily relocate to Channel 8 (WGAL's channel) would have been aware of WGAL's actual operations for *years*, just as the Commission has. For those reasons, grant of the request would not undermine the freeze imposed by the *Public Notice*.

For the forgoing reasons, the Licensee respectfully requests that the Commission proceed with granting the instant application to authorize WGAL's current operation on a permanent basis.

Other than as provided in this Exhibit, this amendment revises no other portions of the application.

* * * * *